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**Industrial Development Board**
Sixteenth session
Vienna, 20-22 November 1996
Item 14 of the provisional agenda

# APPROVAL OF APPOINTMENTS OF MANAGING DIRECTORS

## Proposal submitted by Morocco

Note by the Director-General

1. The Permanent Representative of Morocco to UNIDO, in a communication addressed to the Director-General dated 10 October 1996, requested the inclusion of the above item in the agenda of the forthcoming session of the Board. That communication is reproduced in its entirety in annex I to the present note. The reply of the Director-General dated 28 October 1996 is contained in annex II.

2. The request for inclusion of the supplementary item has been submitted in accordance with rules 11, 12 and 14 of the rules of procedure of the Board.

## Annexes

I. Letter from the Permanent Representative of Morocco to the Director-General

II. Letter from the Director-General to the Permanent Representative of Morocco

For reasons of economy, this document has been printed in a limited number. Delegates are kindly requested to bring their copies of documents to meetings.

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**Annex I**

**Letter from the Permanent Representative of Morocco to the Director-General**

Permanent Mission of the Kingdom of Morocco
to the International Organizations in Vienna

The Ambassador, Permanent Representative

No. 282 Vienna, 10 October 1996

Sir,

With reference to the meeting held, under your chairmanship, on 8 October 1996 and concerning appointments to the post of Managing Director in UNIDO, I have the honour to transmit to you the following comments:

(1) This meeting was held, for the first time, in pursuance of decision IDB.15/Dec.2 adopted by the Industrial Development Board at its fifteenth session in May this year, which in paragraph (e) urged the Director-General "**to conduct more consultations** with Member States and representatives of regional groups to obtain their views on the remaining stages of the reform process and appointment of Managing Directors, without prejudice to his constitutional authority and the staff regulations".

However, the 8 October meeting was merely an opportunity for the Secretariat to announce decisions that had already been adopted and to request the participants to take note of them, whereas a genuine process of consultation would have involved an exchange of views and the dissemination of all the information available, including the *curricula vitae* of the candidates selected.

(2) Article 11, paragraph 5, of the UNIDO Constitution states that "**Appointments at the level** of Deputy Director-General shall be subject to approval by the Board".

The Moroccan delegation believes that this procedure also applies to appointments at the level of Managing Director. At the time the Constitution was drafted, the post of Deputy Director-General was the most important in the Organization after that of Director-General. Now that the Deputy Director-General posts have been abolished, the Managing Directors constitute the second highest level of authority in the Organization after the office of Director-General. Furthermore, the functions assigned to the Managing Directors are of such great importance that it is more than desirable that the policy-making organs, and hence the Member States, should have the right of review regarding their appointment.

The Moroccan delegation wishes to make it quite clear that it has no objection to the nominations put forward by the Director-General and that it does not entertain any preconceived views against the candidates selected. It is motivated purely by its constant concern to scrupulously respect the letter and the spirit of the texts governing our Organization, of which there is no more devoted supporter than Morocco.

Consequently, I would be most grateful if you would kindly circulate this letter to the Members of the Board and if you would also provide for the inclusion on the agenda of the next session of the IDB of an item entitled "Approval of appointments of Managing Directors" as an urgent additional issue, in conformity with rule 12 of the Rules of Procedure of the Industrial Development Board. Urgent consideration of this matter is warranted by the very recent instance of a procedure in breach of the provisions of article 11, paragraph 5, of the UNIDO Constitution.

Accept, Sir, the assurances of my highest consideration.

*(Signed)*

Abderrahim Benmoussa

Mr. Mauricio de Maria y Campos
Director-General
UNIDO

*[Embassy stamp]*

## Annex II

### Letter from the Director-General to the Permanent Representative of Morocco

**DIRECTOR-GENERAL**

Vienna, 28 October 1996

Sir,

I have the honour to refer to your letter dated 10 October 1996 containing your observations with regard to the meeting with Member States which took place on 8 October 1996 under my chairmanship and, in particular, to the appointments of Managing Directors that I have made. I wish to provide you with the following comments on the specific points raised in your letter.

In the first place I will address the contention made in paragraph 2 of your letter to the effect that the requirement of the Industrial Development Board approval of the appointment of Deputy Directors-General pursuant to Article 11, paragraph 5, of the Constitution of UNIDO, is also applicable to the appointment of Managing Directors. Article 11, paragraph 5 of the Constitution in its relevant part states as follows:

> "Appointments at the level of Deputy Director-General shall be subject to approval by the Board".

This provision clearly refers to one specific level of official, the "Deputy Directors-General", formally designated by that title in the Constitution. This designation does not cover any other functional level in the Secretariat of UNIDO; nor can it be interpreted to refer to any other officials of the Organization.

I would like to recall that during the negotiations of UNIDO's Constitution, which was adopted in 1979, the question was debated as to whether the function of Deputy Director-General should or should not be included in the Constitution, as the only function apart from that of the Director-General with constitutional status. In the end, the present Article 11, paragraph 1, was adopted, reading:

> "The Secretariat shall comprise a Director-General, as well as such Deputy Directors-General and other staff as the Organization may require." (emphasis added)

The wording of this provision makes the existence of Deputy Directors-General dependent on the requirements of the Organization. In other words, the Constitution admits a situation in which there would be no Deputy Directors-General. It was on this legal basis that the Board, in IDB.11/Dec.40, adopted on 29 October 1993 at its resumed 11th session,

> "(b) Decided, in the light of the proposed structural reform of UNIDO to revoke Board decision IDB.1/Dec.11, which no longer met the requirements of the Organization ..."

It is recalled that in its decision IDB.1/Dec.11 of 15 November 1985, the Board had decided that 5 Deputy Directors-General be appointed. It is interesting to note that the last part of the sentence clearly states that the appointments at that level, as provided for under Article 11, paragraph 1, of the Constitution no longer met the requirements of the Organization. In this connection, I would like to draw your attention to the historical background of this decision which was based on the proposals I had made on the structural reform of UNIDO and submitted to the General Conference, through the Industrial Development Board, as contained in document GC.5/23-IDB.11/31 of 24 September 1993. The debate on these proposals by the Industrial Development Board at its resumed eleventh session of 28 October 1993, as contained in document IDB.11/SR.9, is also highly relevant to the understanding of the results of the reform.

In the light of the clear wording of the relevant Constitutional provision, as well as its drafting history during the negotiations on the Constitution, I see no legal grounds to maintain that the approval requirement contained in Article 11, paragraph 5, sentence 2, which refers solely to the appointment of Deputy Directors-General applies to the appointment of Managing Directors at the D-2 level. In the same manner as other staff members of the Organization, the appointment of Managing Directors is governed by Article 11, paragraph 5, sentence 1, of the Constitution which reads as follows:

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Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Morocco to UNIDO
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> "The staff shall be appointed by the Director-General under regulations to be established by the Conference upon recommendation of the Board."

I wish to add that this has been the undisputed practice for the appointment of Managing Directors since the proposals on structural reform of UNIDO were adopted in 1993. The policy-making organs of the Organization have duly acknowledged this practice as is evident from IDB.13/Dec.2 of 11 November 1994 which recalled that

> "(e) ... in any consideration of appointment for posts, inter alia those of Managing Directors, due regard should also be paid to the importance of recruiting staff on a wide and equitable geographical basis."

Secondly, I would like now to turn to the other issue raised in paragraph 1 of your letter, namely the suggestion that there was no "genuine process of consultation" in the recent appointment of Managing Directors which I announced at the meeting of 8 October 1996.

In this connection, the Board in its decision IDB.15/Dec.2 of 9 May 1996,

> "(e) Urged the Director-General to conduct more consultations with Member States and representatives of regional groups to obtain their views on the remaining stages of the reform process and appointment of Managing Directors, without prejudice to his constitutional authority and the staff regulations;" (emphasis added)

In the spirit of good cooperation and prior to the meeting of 8 October 1996, I held extensive consultations with representatives of regional groups and of Member States, as proposed to me by the Board. During these consultations, I sought and obtained the views of the representatives of numerous Member States as well as representatives of regional groups, including the representative of the Group of 77. I also referred to these consultations at the above-mentioned meeting of 8 October 1996. However, it should be clearly understood that these consultations were informal and that the above-referred IDB decision neither prescribes a specific procedure nor does it subject the appointment of Managing Directors to approval by the Board. In consequence, while responding positively to the request for more consultations by the Board, I have lawfully exercised my prerogatives for the appointment of staff at the D-2 level in accordance with the Constitution and staff regulations of UNIDO.

In the third place, following your request I am circulating your letter of 10 October 1996 to the Members of the Board, together with my reply. You have further requested that a supplementary item be included in the agenda of the 16th session of the Board, entitled "Approval of the Appointments of Managing Directors", in accordance with Rule 12 "Supplementary items" of the Rules of Procedure of the Board.

It is my considered view that there is no "... urgency of consideration of the proposed item ...", as required by Rule 12. As a Director-General I have all the time lawfully exercised my constitutional prerogatives relating to the appointment of staff. I consider that there is nothing sudden or urgent about the exercise of this prerogative, even as related to the appointment of Managing Directors. I am also of the firm view that the procedure followed for the appointment of new Managing Directors was far from being inconsistent with Article 11, paragraph 5, sentence 2, of the Constitution which relates to a totally different functional level that no longer exists in UNIDO. Nevertheless, I shall communicate to the Board your request for inclusion in its provisional agenda of a supplementary item on the appointment of Managing Directors.

Accept, Sir, the assurances of my highest consideration.

Mauricio de Maria y Campos